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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/693,481	10/20/2000	Joel E. Short	42253/	8652
826	7590	03/01/2006		
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			EXAMINER WANG, LIANG CHE A	
			ART UNIT 2155	PAPER NUMBER

DATE MAILED: 03/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/693,481	Applicant(s) SHORT ET AL.	
	Examiner Liang-che Alex Wang	Art Unit 2155	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3 and 6-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 6-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. Claims 1, 3, 6-13 are presented for examination.

#### ***The New Grounds of Rejection***

2. Applicant's amendment and argument with respect to claims 1, 3, 6-13 filed on 12/14/2005 have been fully considered but they are deemed to be moot in views of the new grounds of rejection.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
4. Claims 1 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ayres, US Patent Number 6,738,371, hereinafter Ayres, in views of Sherman, US Patent Number 5,978,387, hereinafter Sherman.
5. Referring to claim 1, Ayres has taught a method for dynamic control of data transfer by a subscriber during an on-going network session (Col 3 lines 25-31), comprising:
  - a. receiving a data packet at a gateway device (Col 5 lines 1-2, router 20 corresponds to the gateway device);
  - b. identifying, at the gateway device (router 20), a subscriber (end user 24) associated with the data packet (Col 5 lines 1-10);

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- c. retrieving from memory a subscriber profile (QOS customer profile 74) that includes subscriber-selected bandwidth (Figure 3, Col 8 lines 33-35, 38-44);
- d. determining if a transfer rate for data packet transmission should be adjusted based on the subscriber-selected bandwidth (Col 8 lines 33-37, rate adjustment is made based on info stored in the profile);
- e. adjusting the transfer rate for data packet transmission based on outcome of the determination process (Col 9 lines 10-17);
- f. wherein the transfer rate for the data packet transmission may be adjusted at any time based on adjustment of the subscriber-selected bandwidth (abstract, lines 4-6, Col 3 lines 26-30, dynamically adjusting the rate of packets, Col 8 lines 33-37, 56-60, rate adjustment are made based on customer QOS profile).

Ayres does not explicitly teach adjustable by a subscriber at anytime during the on-going session based on adjustment of the subscriber-selected bandwidth during the on-going network session.

However, Sherman teaches wherein the transfer rate for data packet transmission is adjustable by a subscriber at anytime during the on-going session based on adjustment of the subscriber-selected bandwidth during the on-going network session (Col 1 lines 62-64, Col 2 lines 11-54, Col 7 lines 27-30.)

It would have been obvious to a person with ordinary skill in the art at the time the invention was made to incorporate the method for providing bandwidth that is dynamically adjustable to the end user's needs as taught by Sherman in Ayres such that to have Ayres' bandwidth to be adjustable by a subscriber at anytime during the on-going

session based on adjustment of the subscriber-selected bandwidth during the on-going network session because both Ayres and Sherman teaches inventions relating to bandwidth allocation to end-users.

A person with ordinary skill in the art would have been motivated to make the modification to Ayres because Sherman provides a solution when end user cannot dynamically change the bandwidth in the connection to adjust carrying rates of data transmission (Col 1 lines 57-64), and this dynamic provisioning would ensure that the end user is charged to what is actually used (Col 1 lines 64-67.)

6. Referring to claim 7, Ayres as modified has further taught wherein the step of retrieving from memory a subscriber profile that includes subscriber-selected bandwidth (Figure 3, Col 8 lines 33-35, 38-44), further comprising retrieving from memory a subscriber profile that includes a first subscriber-selected bandwidth for information being sent to the network (Col 9 lines 2-9) and a second subscriber-selected bandwidth for information being retrieved from a network (Col 8 lines 38-54).
7. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ayres in views of Sherman and in further views of Gulliford et al., US Patent Number 6,618,355, hereinafter Gulliford.

Ayres as modified has taught an invention as described in claim 1, Ayres has taught the step of identifying, at the gateway device (router 20), a subscriber (end user 24) associated with the data packet (Col 5 lines 1-10);

Ayres does not explicitly teach the association of MAC address within the data packet.

However, Gulliford teaches a determination is made, when the switch receives a transmitted data packet, a physical address of a destination device (MAC address) is intended for a subscriber device (Col 12 lines 62-66.)

It would have been obvious to a person with ordinary skill in the art at the time the invention was made to incorporate the association of MAC address with the data packet of Gulliford in Ayres such that to have Ayres' system to identify at the gateway device the subscriber associated with the data packet by the MAC address within the data packet because both Ayres and Gulliford have taught packets communicating within a network.

A person with ordinary skill in the art would have been motivated to make the modification to Ayres because having the MAC address would allow Ayres' system to be aware of the physical address of a destination device as taught by Gulliford (Col 12 lines 32-66.)

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ayres in view of Sherman and in further views of Salkewicz, US Patent Number 6,609,153, hereinafter Salkewicz.

Ayres as modified has taught an invention as described in claim 1, including retrieving a subscriber selected bandwidth (Col 8 lines 33-35, 38-44). Ayres has not taught where the information is retrieved from the Authentication, Authorization and Accounting (AAA) subscriber management interface.

However, Salkewicz has taught the use of AAA to retrieve access control and identify the subscribers (Col 15 lines 13-27.)

It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the teaching of Ayres such that to have information retrieved from an AAA subscriber management interface, because both Ayres and Salkewicz have taught packet communication with network devices.

A person with ordinary skill in the art would have been motivated to make the modification to Ayres because having an AAA would allow a better security to be implemented in Fowler's system though the Authentication, Authorization and Accounting as taught by Salkewicz (Col 15 lines 13-27.)

9. Claim 8-11, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ayres in view of Sherman and in further views of Fowler, US Patent Number 5,793,978, hereinafter Fowler.
10. Referring to claim 8, Ayres as modified has taught an invention as described in claim 1, and Ayres has taught the step of retrieving from memory a subscriber profile (QOS customer profile 74) that includes subscriber-selected bandwidth (Figure 3, Col 8 lines 33-35, 38-44) and the step of adjusting the transfer rate for data packet transmission based on outcome of the determination process (Col 9 lines 10-17); and Ayres has further taught the delay parameter (Col 6 lines 5-9).

Ayres as modified has not explicitly taught the limitation of delay period.

However, Fowler has taught the limitation of delay period (Fowler, Col 1 lines 49-52, delay period corresponds to the period of time that message is held until the selected amount of bandwidth become available.)

It would have been obvious to a person with ordinary skill in the art at the time the invention was made to incorporate the delay period of Fowler in Ayres such that to have the step of determining a delay period for transmitting the packet, and the step of queuing the data packet for the delay period before transmitting the packet because both Ayres and Fowler have taught data packets in a communication network.

A person with ordinary skill in the art would have been motivated to make the modification to Ayres because having the delay period for data packet transfer would give a relief to when a significant amount of packets are attempting to be broadcast or transmitted at the same time as taught by Fowler (Col 1 lines 28-40.)

11. Referring to claim 9, Ayres as modified has further taught wherein the step of determining a delay period further comprises determining a delay period based upon a byte size of the data packet (Fowler, Col 53-56, selected bandwidth is based on the packet bytes to be send in any one second period.)
12. Referring to claim 10, Ayres as modified has further taught wherein the step of determining a delay period further comprises determining a delay period based upon a byte size and a time lapse of a most recently transmitted data packet that was associated with the subscriber (Fowler, Col 1 lines 53-56, selected bandwidth is based on the packet bytes to be send in any one second period.)
13. Referring to claim 11, Ayres has taught about the delay period (Col 1 lines 48-52.) And it would have been obvious for a person with ordinary skill in the art to have the maximum delay period of 2 seconds, because a delay time could be set to a limit of any time interval including a maximum of 2 seconds.



14. Referring to claim 13, Ayres as modified has taught wherein the subscriber network session is a wireless network session (Fowler, Col 2 lines 63-67, broadcasting is known to be done either wirely or wirelessly.)
15. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ayres in views of Sherman and Fowler and in further views of Barton, US Patent Number 6,310,886, hereinafter Barton. Ayres as modified has not taught, the step of queuing the data packet using a ring buffer. However, Barton has taught the use of ring buffer for queuing the data packet (Col 8 lines 1-3).

It would have been obvious to a person with ordinary skill in the art at the time the invention was made to modify the teaching of Ayres as modified such that to have a ring buffer for queuing the data packet, because both Ayres as modified and Barton has taught packet communication in a network environment.

A person with ordinary skill in the art would have been motivated to make the modification to Ayres because having the ring buffer algorithm used for queuing packets to be sent through is well known and recognized by the practitioners skilled in the art as taught by Barton (Col 7 line 67- Col 8 line 3.)

### *Conclusion*

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

17. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.
18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Liang-che Alex Wang whose telephone number is (571)272-3992. The examiner can normally be reached on Monday thru Friday, 8:30 am to 5:00 pm.
19. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain T Alam can be reached on (571)272-3978. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.
20. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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February 23, 2006

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SUPERVISORY PATENT EXAMINER